



**STATE OF MISSOURI
OFFICE OF ADMINISTRATION
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT (DPMM)
REQUEST FOR PROPOSAL**

**RFP NO. B2Z05027
TITLE: COMMUNITY CALENDAR WEB SITE
ISSUE DATE: 12/2/04**

**REQ#: NA
BUYER: JULIE BRANIGAN
PHONE NO.: (573) 751-4148
E-MAIL: Julie.Branigan@oa.mo.gov**

RETURN PROPOSAL NO LATER THAN: 12/22/04 AT 2:00 PM

MAILING INSTRUCTIONS: Print or type **RFP Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Proposals must be in DPMM office (301 W High St, Rm 630) by the return date and time.

**RETURN PROPOSAL TO: DPMM
301 WEST HIGH ST, RM 630
JEFFERSON CITY MO 65101**

CONTRACT PERIOD: DATE OF AWARD THROUGH TWO YEARS

DELIVER SUPPLIES/SERVICES TO THE FOLLOWING:

STATE OF MISSOURI - VARIOUS AGENCIES

The offeror hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions Request for Proposal (Revised 08/28/04). The offeror further agrees that the language of this RFP shall govern in the event of a conflict with his/her proposal. The offeror further agrees that upon receipt of an authorized purchase order from the Division of Purchasing and Materials Management or when this RFP is countersigned by an authorized official of the State of Missouri, a binding contract shall exist between the offeror and the State of Missouri.

SIGNATURE REQUIRED

AUTHORIZED SIGNATURE		DATE	
PRINTED NAME		TITLE	
COMPANY NAME			
MAILING ADDRESS			
CITY, STATE, ZIP			
FEDERAL EMPLOYER ID NO.		SOCIAL SECURITY NO. IF FEDERAL EMPLOYER ID NO. NOT APPLICABLE	
PHONENO.	FAX NO.	E-MAIL ADDRESS	

NOTICE OF AWARD (STATE USE ONLY)

ACCEPTED BY STATE OF MISSOURI AS FOLLOWS:			
CONTRACT NO.		CONTRACT PERIOD	
VENDOR NO.		DATE	
BUYER		DIRECTOR	

1. INTRODUCTION

1.1 Purpose:

- 1.1.1 This document constitutes a request for sealed proposals from prospective offerors for the acquisition of an on-line community events calendar in accordance with the requirements and provisions stated herein.

1.2 Email Questions:

- 1.2.1 Offerors are encouraged to email their questions regarding the RFP prior to **Thursday, December 9, 2004** to: Julie Branigan, Buyer, Division of Purchasing and Materials Management, at Julie.Branigan@oa.mo.gov.

1.3 Offeror's Contacts:

- 1.3.1 Offerors and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the RFP, the evaluation, etc. to the buyer of record indicated on the first page of this RFP. If MBE/WBE subcontracting requirements are included in the RFP, the offeror may contact the Office of Equal Opportunity regarding MBE/WBE certification or subcontracting. Offerors and their agents may not contact any other state employee regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements. Offerors and their agents who have questions regarding this matter should contact the buyer of record.

1.4 Background Information:

- 1.4.1 The State is looking to share State Event Information with a provider of Community Events. This will allow the State to share State events through a Community web site. Thus allowing citizens to view state events along with local events via a community web site.
- 1.4.2 The State expects no dollar cost in participating with the Community Calendar. The awarded contractor shall be solely compensated by the contractor's arrangements with advertisers.
- 1.4.3 The Office of Information Technology will request all agencies' Public Information Officers (PIO) to share content with the provider but there is no guarantee that all agencies will participate.
- 1.4.4 Each agency will be asked to provide a contact person to the provider for updating content to the Community Calendar web site.
- 1.4.5 The contractor shall be responsible for maintaining the integrity and tasteful appearance to the hosting site. The contractor will agree not to implement any content or advertisements that the State may view as inappropriate or in any way harms the reputation of the State of Missouri.

2. CONTRACTUAL REQUIREMENTS

2.1 Definitions: *The following definitions shall apply throughout this document:*

- 2.1.1 **Licensed Software** shall include any and all software provided by the contractor and its Documentation to which State of Missouri obtains or is granted any rights under this contract. The contractor's web site application for the Missouri Community Calendar.

- 2.1.2 **Licensee** shall mean the party to whom a license is granted. For purposes of this RFP B2Z05027, the Licensee shall be the State of Missouri.
- 2.1.3 **May** means that a certain feature, component, or action is permissible, but not required.
- 2.1.4 **Module** shall mean a collection of routines and data structures that perform a specific function of the Licensed Software.
- 2.1.5 **Must** means that a certain feature, component, or action is a mandatory condition.
- a. The offeror's proposal response shall not take exception to or conflict with the mandatory requirements of the RFP (denoted by the words "must" and "shall"). Failure to fulfill mandatory requirements shall make the offeror's proposal response to be considered unacceptable and thus may result in the proposal response no longer being given consideration in the evaluation process. The State of Missouri shall not award a noncompliant proposal.
- 2.1.6 **Offeror** means the person or organization that responds to an RFP by submitting a proposal to provide the equipment, products, supplies, and/or services as required in the RFP document.
- 2.1.7 **Product** shall mean a Module, a System, or any other software-related item (which may include hardware) provided by the contractor to the State of Missouri.
- 2.1.8 **Project** shall mean the total of all software, hardware, documentation, and services to be provided by the contractor under this contract.
- 2.1.9 **Release** shall mean the distribution of a new product or new function and program fixes based on or for an existing product. Such software releases are provided to the licensee at no additional cost if the licensee is currently subscribed to the contractor's maintenance support services.
- 2.1.10 **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature, which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of Division of Purchasing and Materials Management (DPMM).
- 2.1.11 **Shall** has the same meaning as the word must.
- 2.1.12 **Should** means that a certain feature, component and/or action is desirable but not mandatory. Note: meeting desirables is usually given positive consideration in the subjective evaluation.
- 2.1.13 **System** shall mean any collection or aggregation of two (2) or more Modules of the licensed software that is designed to provide a specific functionality. The contractor's web site application for the Missouri Community Calendar.
- 2.1.14 **Upgrade** shall be any improvement or change in the software that improves or alters its basic function but does not require a separate license. Upgrades shall be inclusive of all new releases. Such software upgrades are provided to the licensee at no additional cost if the licensee is currently subscribed to the contractor's maintenance support services.
- 2.1.15 **Version** shall mean a separate licensed program, based on an existing licensed program that has significant new code or new function(s).
- 2.1.16 **Web Host** shall be the contractor, including any subcontractor(s), responsible for delivering and allowing user access to the Missouri Community Calendar Web site.

- 1) **Scheduled Downtime** – A period of time where the Web Host schedules routine maintenance and which renders the Web Site inoperable for a specified duration. Scheduled downtime is pre-planned and occurs during low use hours of the system's operation. Standard maintenance, software/hardware upgrades, etc. are typical reasons for planned scheduled downtime.
 - 2) **Unscheduled Downtime** - A period of time where the Web Hosting service experiences an unplanned interruption due to equipment malfunction or due to malfunction of the software that necessitates the Web Hosting service to be taken off line at any time of the day. Unscheduled down time is typically the result of equipment or software malfunction under the control of the contractor.
- b. **Web site** – Refers to the Missouri Community Calendar Web site to be provided and maintained by the contractor.

NOTE: Please refer to the State of Missouri Terms and Conditions Section 1 found at near the end of this document for further definitions/terminology that applies to the RFP.

2.2 Contract Period:

- 2.2.1 The original contract period shall be date of award through two years. The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period.

2.3 Renewal Options:

- 2.3.1 The Division of Purchasing and Materials Management shall have the right, at its sole option, to renew the contract for six (6) additional one-year periods, or any portion thereof. In the event the Division of Purchasing and Materials Management exercises such right, all terms and conditions, requirements and specifications of the contract shall remain the same and apply during the renewal period.

2.4 Cost Liability:

- 2.4.1 All products and services provided for the provision of the Missouri Community Calendar shall be at no cost to the State of Missouri. The contractor's compensation for the provision of and the hosting of the Missouri Community Calendar shall be supplied through the contractor's third party agreements with advertisers who the contractor solicits and engages to post advertisements on the Missouri Community Calendar web site. The state shall not pay nor be liable for any other costs including but not limited to taxes, shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc.

2.5 Product Liabilities:

- 2.5.1 The contractor shall agree that the State of Missouri shall not be responsible for any liability incurred by the contractor or the contractor's employees arising out of the ownership, selection, possession, leasing, rental, operation, control, use, maintenance, delivery, return, and/or installation of product provided by the contractor, except as otherwise provided in the contract.

2.6 Contractor Liability:

- 2.6.1 The contractor shall be responsible for any and all personal injury (including death) or property damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assignees, from every expense, liability, or payment arising out of such negligent act. The

contractor also agrees to hold the State of Missouri, including its agencies, employees, and assignees, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.

- 2.6.2 The contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assignees.
- 2.6.3 Under no circumstances shall the contractor be liable for any of the following: (1) third party claims against the state for losses or damages (other than those listed above); (2) loss of, or damage to, the state's records or data; or (3) economic consequential damages (including lost profits or savings) or incidental damages, even if the contractor is informed of their possibility.
- 2.6.4 Circumstances may arise where, because of a default on the contractor's part or other liability, the state is entitled to recover damages from the contractor. In each such instance, regardless of the basis on which the state is entitled to claim damages from the contractor, the contractor is liable only for:
 - a. payments referred to in intellectual property rights and patent and copyright terms; and
 - b. bodily injury (including death) and damage to real property and tangible personal property.

2.7 Inventions, Patents, and Copyrights:

- 2.7.1 The contractor shall report to the state promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of the contract of which the contractor has knowledge.
- 2.7.2 The state agrees that the contractor has the right to defend or at its option to settle, and the contractor agrees to defend at its own expense or at its option to settle, any claim, suit or proceeding brought against the state on the issue of infringement of any United States patent or copyright by any product, or any part thereof, supplied by the contractor to the state under this agreement. The contractor agrees to pay, subject to the limitations hereinafter set forth in this paragraph, any final judgment entered against the state on such issue in any suit or proceeding defended by the contractor. The state agrees that the contractor at its sole option shall be relieved of the foregoing obligations unless the state notifies the contractor promptly in writing of any such claim, suit, or proceeding, and at the contractor's expense, gives the contractor proper and full information needed to settle and/or to defend any such claim, suit, or proceeding. If the product, or any part thereof, furnished by the contractor to the state becomes, or in the opinion of the contractor may become, the subject of any claim, suit, or proceeding for infringement of any United States patent or copyright, or in the event of any adjudication that such product or part infringes any United States patent or copyright, or if the use, lease, or sale of such product or part is enjoined, the contractor may, at its option and its expense: (1) procure for the state the right under such patent or copyright to use, lease, or sell as appropriate such product or part, or (2) replace such product or part with other product or part suitable to the state, or (3) suitably modify such product or part, or (4) discontinue the use of such product or part and refund the aggregated payments and transportation costs paid therefore by the state, less a reasonable sum for use and damage. The contractor shall have no liability for any infringement based upon: (1) the combination of such product or part with any other product or part not furnished to the state by the contractor, or (2) the modification of such product or part unless such modification was made by the contractor, or (3) the use of such product or part in manner for which it was not designed.
- 2.7.3 The contractor shall not be liable for any cost, expense, or compromise, incurred or made by the state in conjunction with any issue of infringement without the contractor's prior written authorization. The foregoing defines the entire warranty by the contractor and the exclusive remedy of the state with respect to any alleged patent infringement by such product or part.

2.8 Insurance:

- 2.8.1 The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract.

2.9 No Actions, Suits, or Proceedings:

- 2.9.1 The contractor warrants that there are no actions, suits, or proceedings, pending or threatened, that will have a material adverse effect on the contractor's ability to fulfill its obligations under this contract. The contractor further warrants that it will notify the State of Missouri immediately if the contractor becomes aware of any action, suit, or proceeding, pending or threatened, that will have a material adverse effect on contractor's ability to fulfill the obligations under this contract.

2.10 Warranty of Contractor Capability:

- 2.10.1 The contractor warrants that it is financially capable of fulfilling all requirements of this contract, that there are no legal proceedings against it that could threaten performance of this contract, and that the contractor is a validly organized entity that has the authority to enter into this contract. The contractor is not prohibited by any loan, contract, financing arrangement, trade covenant, or similar restriction from entering into this contract.

2.11 Termination:

- 2.11.1 At any time after July 1, 2005, the Division of Purchasing and Materials Management reserves the right to terminate the contract at any time, for the convenience of the State of Missouri, without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination.
- 2.11.2 The State of Missouri may terminate the contract immediately in the event that the contractor:
- a. Is convicted of any felony;
 - b. Is in material breach of contract;
 - c. Is convicted of any crime involving fraud or misrepresentation; or
 - d. Fails to comply with maintaining the integrity and tasteful appearance of the hosting site.

2.12 Assignment:

- 2.12.1 The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the Division of Purchasing and Materials Management.

2.13 Contractor Status:

- 2.13.1 The contractor represents himself or herself to be an independent contractor offering such services to the general public and shall not represent himself/herself or his/her employees to be an employee of the State of Missouri. Therefore, the contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold

the State of Missouri, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters.

2.14 Subcontractors:

- 2.14.1 Any subcontracts for the products/services described herein must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the contractor and the State of Missouri and to ensure that the State of Missouri is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the State of Missouri and the contractor. The contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The contractor shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve the contractor of the responsibility for providing the products/services as described and set forth herein. The contractor must obtain the approval of the State of Missouri prior to establishing any new subcontracting arrangements and before changing any subcontractors. The approval shall not be arbitrarily withheld.

2.15 Coordination:

- 2.15.1 The contractor shall fully coordinate all contract activities with those activities of the state agency. As the work of the contractor progresses, advice and information on matters covered by the contract shall be made available by the contractor to the state agency or the Division of Purchasing and Materials Management throughout the effective period of the contract.

2.16 Cooperative Procurement Program:

- 2.16.1 If the contractor has indicated agreement on the Pricing Page with participation in the Cooperative Procurement Program, the contractor shall provide on-line Community Events Calendar as described herein under the terms and conditions, requirements and specifications of the contract, including prices, to other government entities in accordance with the Technical Services Act (67.360 RSMo, which is available on the internet at: <http://www.moga.state.mo.us/statutes/C000-099/0670000360.HTM>.) The contractor shall further understand and agree that participation by other governmental entities is discretionary on the part of that governmental entity and the State of Missouri bears no financial responsibility for any payments due the contractor by such governmental entities.

2.17 Property of State:

- 2.17.1 All reports, documentation, and material developed or acquired by the contractor as a direct requirement specified in the contract shall become the property of the State of Missouri. The contractor shall agree and understand that all discussions with the contractor and all information gained by the contractor as a result of the contractor's performance under the contract shall be confidential and that no reports, documentation, or material prepared as required by the contract shall be released to the public without the prior written consent of the state agency.

2.18 Transition:

- 2.18.1 Upon award of the contract, the contractor shall work with the state agency and any other organizations designated by the state agency to insure an orderly transition of services and responsibilities under the contract and to insure the continuity of those services required by the state agency.
- 2.18.2 Upon expiration, termination, or cancellation of the contract, the contractor shall assist the state agency to insure an orderly transfer of responsibility and/or the continuity of those services

required under the terms of the contract to an organization designated by the state agency, if requested in writing. The contractor shall provide and/or perform any or all of the following responsibilities:

- 2.18.3 The contractor shall deliver, FOB destination, all records, documentation, reports, data, recommendations, or printing elements, etc., which were required to be produced under the terms of the contract to the state agency and/or to the state agency's designee within seven (7) days after receipt of the written request.
- 2.18.4 The contractor shall discontinue providing service or accepting new assignments under the terms of the contract, on the date specified by the state agency, in order to insure the completion of such service prior to the expiration of the contract.

2.19 Contract Extension:

- 2.19.1 In the event of an extended re-procurement effort and the contract's available renewal options have been exhausted, the Division of Purchasing and Materials Management reserves the right to extend the contract. If exercised, the extension shall be for a reasonable period of time (not to exceed 180 days) as mutually agreed to by the state and the contractor at the same terms, conditions, provisions, and pricing in order to complete the procurement process and to transition to the new contract.

2.20 Substitutions:

- 2.20.1 The contractor shall not substitute any product(s) or services that has been awarded to the contractor without the prior written approval of the Division of Purchasing and Materials Management.
- 2.20.2 The state reserves the right to allow the contractor to substitute any new product or service offered by the contractor on all unshipped and future orders if the quality is equal to or greater than the product/service under contract and under the same no cost provisions of the contract. The Division of Purchasing and Materials Management shall be the final authority as to acceptability.
- 2.20.3 In event of manufacturer discontinuation, the contractor shall substitute product(s)/services with equal or better capabilities for equal or less cost than the discontinued item(s). The contractor shall not substitute any item(s) without the prior written approval of the Division of Purchasing and Materials Management. The Division of Purchasing and Materials Management shall be the final authority as to acceptability of requested substitutions and reserves the right to accept or reject any substitution requests.

2.21 Software/Web Site Licensing:

2.21.1 Term Licensing:

If a license agreement is necessary for the State to have the right to access/use the Community Calendar Web Site application implemented for the State of Missouri, then the contractor shall grant the State of Missouri an unlimited user-based license throughout the applicable contract period. The State shall not pay for the licensing, installation, and maintenance support fees for the web site. The contractor's advertising fees, as specified herein, shall completely support and pay for the contractor's community calendar web site as proposed herein.

- a. Maintenance and/or technical support for software/web site updates (which include enhancements, corrections, modifications, additions and later versions of the licensed product) and/or technical support shall be provided to the State of Missouri at no cost.

- b. Any language or provisions contained in any “shrinkwrap” or “clickwrap” agreement shall be of no force or effect. The State of Missouri shall not be bound by, any “shrink wrap license” which is bundled with the Products, the Documentation, or the Deliverables or any “disclaimers” or “click to approve” terms or conditions now or hereafter contained in the Products, the Documentation, the Deliverables or any web site which the State uses in connection with the contractor’s products or services.

2.22 Intellectual Property Rights:

- 2.22.1 The contractor hereby warrants that it has and will continue to have free and clear title (including all proprietary rights) to any Products delivered to the State of Missouri or the right to license, transfer or assign any and all products that are licensed, transferred, or otherwise provided to the State by the contractor pursuant to this contract. Upon request of the State of Missouri, the contractor shall demonstrate that all aspects of the Licensed Software are its original work or that the contractor is authorized to sublicense on the terms stated herein. The State of Missouri shall not be liable in the event of loss, incident, destruction, theft, damage, etc., for the licensed software. It shall be the contractor's sole responsibility to obtain insurance coverage for such loss in an amount that the contractor deems appropriate.

2.23 Contract / Entire Agreement:

- 2.23.1 A binding contract shall consist of: (1) the RFP, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with RFP changes/additions, (2) the contractor's proposal including the contractor's BAFO, (3) clarifications of the proposal, if any; and (4) Division of Purchasing and Materials Management (DPMM)'s acceptance of the proposal by "notice of award". All Exhibits and Attachments included in the RFP shall be incorporated into the contract by reference.
- 2.23.2 The notice of award does not constitute a directive to proceed. Before providing equipment, supplies and/or services, the contractor must receive a notice to proceed.
- 2.23.3 The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
- 2.23.4 Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Division of Purchasing and Materials Management or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence from the state agency, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

3. TECHNICAL SPECIFICATIONS

3.1 General Requirements:

- 3.1.1 The contractor must provide an On-Line Missouri Community Events Calendar, which meets or exceeds the specifications contained in this document.
- 3.1.2 The contractor’s method of compensation for products/services provided herein shall be entirely supported through third party advertisements. Such third party transactions are separate from this agreement and do not obligate or otherwise bound the State to said third parties.
- 3.1.3 The State of Missouri shall not guarantee any minimum or maximum amount of the contractor’s products/services that may be required under the contract.

- 3.1.4 The contractor must provide a Community Calendar web site, which is pre-programmed and already in use by other customer clients, i.e. not in beta or test. New software development shall be considered unacceptable.
- 3.1.5 Accessibility Compliance: Section 191.863 of the Revised Statutes of Missouri (RSMo) requires state agencies to make information technologies accessible to individuals with disabilities. The State of Missouri's Information Technology (IT) Accessibility Standards (www.oit.state.mo.us/policies/accessibility.html) provide direction for complying with RSMo 191.863. All products provided by the contractor shall comply with the applicable accessibility requirements of the Missouri IT Accessibility Standards, unless the contractor's awarded bid response contains specific disclosure of product non-conformance in a Voluntary Product Accessibility Template (VPAT; www.itic.org/policy/508/Sec508.html) or other comparable document (see Attachment 1).
- a. The contractor shall promptly respond to any complaint brought to its attention regarding accessibility of the products provided hereunder that were specified in the contractor's awarded bid response as compliant products. The contractor shall resolve such complaints by bringing the product into compliance with the applicable Missouri IT Accessibility Standards at no additional cost to the State. The contractor shall indemnify and hold harmless the State of Missouri and any Missouri government entity purchasing the contractor's products from any claim arising out of the contractor's failure to comply with the aforementioned requirements.

3.2 Mandatory Requirements:

- 3.2.1 The contractor must develop, implement, and support a publicly-available Community Calendar World Wide Web application that will be located within the contractor's already established Community Calendar web site. This Community Calendar web application must be ready for implementation and be operational pursuant to the requirements described herein by no later than sixty (60) days after contract award, unless otherwise mutually agreed to by the State.
- 3.2.2 The contractor must allow the State to provide a link to contractor's URL from State Homepage and other pages as determined.
- 3.2.3 The contractor's Web hosting services must have an active community calendar website with twenty-four months of active event calendaring production history.
- 3.2.4 The Community Calendar Web application must be presented in English.
- 3.2.5 The Community Calendar Web application must support satisfactory access from client hardware, software, and communications most commonly in use at the State and in the general Internet population, such as Netscape, Microsoft Internet Explorer, and text-based dial-up telecommunications.
- 3.2.6 The Community Calendar Web site and data must be accessible from personal computers behind a firewall.
- 3.2.7 The contractor must perform and provide to the State, web site hosting services to store the State's Community Calendar Web site and make it available on demand by users of the Internet as described herein ("Hosting Services").
- 3.2.8 The State will not own or maintain any of the hardware or software associated with the contractor's web site.

- 3.2.9 The contractor must provide the ability for agencies to upload, add, edit/update, and delete their own content.
- 3.2.10 The contractor must provide documentation on how to collect and maintain state agency content that is easy to follow for a novice computer user.
- 3.2.11 The website must be available 24 hours a day, 7 days a week with exceptions only occurring for maintenance and disasters
- a. Availability of Services: The contractor (Web Host) shall use its best efforts to provide the services for twenty-four (24) hours a day, seven (7) days a week throughout the term of this Agreement. The State understands and agrees that from time to time the services may be inaccessible or inoperable for various reasons, including (a) equipment malfunctions; (b) periodic maintenance procedures or repairs, which the Web Host may undertake from time to time; (c) causes beyond the control of Host or which are not reasonably foreseeable by the Web Host, including interruption or failure of telecommunication or digital transmission links, hostile network attacks, excessive network congestion or other failures (“downtime”).
 - b. The contractor (Web Host) shall provide seventy-two (72) hour advance notice to the State in the event of any scheduled downtime when such scheduled downtime is known well in advance to give such notice (such as for scheduled routine maintenance of the web site, etc). The Web Host shall use its best efforts to minimize any disruption, inaccessibility and/or inoperability of the services in connection with downtime, whether scheduled or not. All known potential web site problems must be investigated immediately and if needed the corrective action shall occur as soon as possible. The contractor shall advise the State of what the estimated time is to fix/resolve said known problem if the resolution of the problem is anticipated to disrupt the web site for more than one business hour.
 - c. The contractor must commit to a minimum of 98% level of web site performance for a sustained level of effective operation over any 30-day period of time, with a minimum mean level of 99% production level over a one-year period.
- 3.2.12 The contractor shall provide an intuitive, convenient, secure, and user-friendly Community Calendar web site.
- 3.2.13 Proprietary Rights for both Web Site Development and Hosting Services: Exclusive of the State of Missouri’s content, the contractor shall retain all right, title and interest (including copyright and intellectual property rights) in the Web site and hosting services, and in the developer/contractor content. The State shall retain all right, title and interest (including copyright and other proprietary or intellectual property rights) in the State content.
- a. The contractor shall be prohibited from distributing or selling customer/state data.
- 3.2.14 The contractor may place copyright and/or proprietary notices, including hypertext links within the developer/contractor content as incorporated within and on the Community Calendar web site.
- 3.2.15 For Community Calendar Web pages that are specific to Missouri, it is desirable that the contractor permit the State the right to control the types, placement and size of notices and advertisements.
- 3.2.16 The web site’s advertisements must not contain any objectionable or other inappropriate content. It is desirable that the State should be given sole discretion as to determine if an advertisement is considered “objectionable and/or inappropriate”. It is not the intent of the State to require prior approval of advertisements, however, if the State discovers an advertisement to be deemed “objectionable or inappropriate” then the State shall notify the contractor of such and require the

contractor to remove said advertisement immediately and cease displaying or linking to such advertisement in any connection with the State's Community Calendar web application.

- a. Contractor acknowledges and agrees that the State shall retain the right, for just cause and with reasonable supporting evidence, to require contractor to remove notices, ads and hypertext links due to objectionable or other inappropriate content. The State may execute such right with 24 hours prior written notice to contractor to remove the objectionable or inappropriate notice, ad, or link immediately.
 - b. The web site's advertisements must not show, demonstrate, or otherwise state any political affiliation, political content, or controversial/political topics (i.e., such as Gun Rights, etc).
- 3.2.17 The State of Missouri reserves the right to determine the appropriateness of advertisement content, appearance, and subject matter. However, the State of Missouri shall have no responsibility or obligation for any advertisement sold by the contractor for the Community Calendar web site.
- 3.2.18 The contractor must handle and respond, in writing, to any and all complaints regarding the advertisements, the manner of handling the advertising, the service, and the processing and response of complaints. The contractor must send the state agency a copy of all complaints received and must copy the state agency on each written response by the contractor to the complainant. In addition, the contractor must submit a monthly report listing all complaints.
- 3.2.19 Contractor must provide a mechanism, via an on-line form or e-mail, for users to send comments, suggestions, or complaints to the contractor regarding the Community Calendar web site.
- 3.2.20 The contractor must commit to a set number of hours/days to respond to customer contacts about substantive customer comments/complaints/inquiries received via e-mail and telephone.
- 3.2.21 In the event the contractor ceases operations, DPMM terminates the contract, or when the contract expires, the contractor shall immediately (within 24 hours) take all State information off-line from the contractor's community calendar Web application, and immediately surrender to the State all Missouri Web site data, materials, and images used for the web site.

3.3 Desirable Specifications:

- 3.3.1 The Community Calendar Web application should accommodate text in other languages such as Spanish, which is the most predominant secondary language spoken in Missouri.
- 3.3.2 Modal or modeless dialogue boxes used for advertising, such as pop up or pop under ads, should not be allowed for any portion of the States Community Calendar Web site.
- 3.3.3 The Community Calendar web site should not require a response to a modal advertisement prior to accessing information specific to Missouri.
- 3.3.4 For the duration of this contract, the Community Calendar Web application should change/evolve to remain current and compatible with current state-of-the-art technology.
- 3.3.5 Subsequent design and functionality changes should be reviewed by the State before they are implemented.
- 3.3.6 Changes that are the result of program errors do not need the State's approval and should be made immediately to correct problems that may arise related to functionality, performance, or security.
- 3.3.7 Routine Web site maintenance should be conducted at times of low usage, preferably between the hours of 2 a.m. and 5 a.m. Central Time.

- 3.3.8 When the Community Calendar web site is down (unavailable) and the web site server is still functioning, the Community Calendar web site should immediately (within 15 minutes of onset of downtime) display a screen to be viewed when customers try to access the web site. The screen should notify the customer that the Community Calendar web site is temporarily unavailable and directs the customers to contact a designated community calendar coordinator. This should be applicable to both scheduled or unscheduled down time.
- 3.3.9 The contractor should provide a monitoring method for the Community Calendar web application transaction volume and performance via a monthly server log. This monitoring report should include at least the following information: Date, Time, Internet Protocol (IP) with IP Address of machine visiting the page(s), Path (page that is loaded), Error code (200 means successful, 206 means partial load, 404 means error, etc.) and Referrer (page that linked to the Community Calendar web site).
- 3.3.10 The contractor shall work with the State to customize the Community Calendar Web site so it has the look and feel of other state web pages.
- 3.3.11 All necessary information and services should be fully available to customers who access the Community Calendar web site with text-only client software, or who elect not to view graphics.

4. PERFORMANCE REQUIREMENTS

4.1 General Requirements:

- 4.1.1 The contractor must provide any web site modifications or additions necessary to enable the web site to operate according to all mandatory technical and performance specifications presented herein at no additional cost to the State of Missouri.

4.2 Support Requirements:

- 4.2.1 On-site Training: If requested by the state, the contractor must provide all training required for successful operation of the web site at no cost to the state. Training must include both media based, hands-on experience, and instructor-led delivery modes.
 - a. If requested, the contractor must provide training for up to thirty-two (32) agency staff personnel.
 - b. All of the contractor's training must be provided on-site at a facility provided by the state in Jefferson City, Missouri.

4.3 Help Desk Support:

- 4.3.1 The contractor must provide a help desk that is available for use by agency staff. The contractor must supply a toll-free telephone help desk line agency staff to ask questions or seek assistance from the contractor for web site problems; network communication problems; and/or other administrative matters. The help desk/technical support personnel must be knowledgeable and technically trained to answer/resolve web site technical support problems. The help desk staff must be able to answer "how to" type questions about the web application as well as questions about hardware and software configuration.
- 4.3.2 The contractor shall be responsive and timely to maintenance/technical support calls/inquiries made by state agency. The contractor's technical support staff shall accept the agency's call for assistance at the time the agency places the initial call; however if such staff is not immediately available, the contractor shall return the agency's call within two (2) business hours.

- 4.3.3 The contractor shall keep a log of calls made to the help desk/technical support personnel and document the complaints and problems reported to the help desk web site. The log shall be made available to any requesting state agency. This log report(s) shall be delivered to or made available to the requesting agency within two business days upon receipt of said request.
- a. The log must state the person's name, facility/company name, time and date of complaint; what action the contractor took to resolve the issue; and the date such issue was resolved.

4.4 Other:

- 4.4.1 Single Point of Contact: The contractor must function as the single point of contact for the state, regardless of any subcontract arrangements for all products and services. This shall include assuming responsibility and liabilities for all problems relating to all hardware, software and services provided.

5. OFFEROR'S INSTRUCTIONS AND REQUIREMENTS

5.1 Preparation and Submission of Proposals:

- 5.1.1 ELECTRONIC SUBMISSION OF PROPOSALS THROUGH THE ON-LINE BIDDING WEB SITE IS NOT AVAILABLE FOR THIS RFP.

- 5.1.2 Organization: In order to provide optimal readability of their proposal by evaluators, offerors are strongly encouraged to organize their proposal as follows:

Signed RFP and RFP Amendment Cover Pages

Table of Contents

Transmittal Letter/Executive Summary

Exhibit A - Technical Capabilities, Contractor Support, Experience & Additional Information

Exhibit B - Other Requested Information

Attachment 1 - IT Accessibility Conformance Matrix

- 5.1.3 Conciseness/Completeness of Proposal: It is highly desirable that the offeror respond in a complete, but concise manner. It is the offeror's sole responsibility to submit information in their proposals as it relates to the evaluation categories. The State of Missouri is under no obligation to solicit such information if it is not included in the offeror's response. The offeror's failure to submit such information may cause an adverse impact on the evaluation of their proposal. Unnecessary information should be excluded from the offeror's proposal.
- 5.1.4 Copies: The offeror's proposal should include an original document, plus three copies for ***a total of four (4) documents***. Both the original and the copies should be printed on recycled paper and double sided. In addition, the offeror should include one (1) electronic copy of their entire proposal, including all attachments, in Microsoft compatible format on diskette(s) or CD(s).
- 5.1.5 Imaging Ready: Each proposal received is scanned into the Division of Purchasing and Materials Management imaging system after a contract(s) is executed or after all proposals are rejected. In preparing a proposal, the offeror should be mindful of document preparation efforts for imaging purposes and storage capacity that will be required to image the proposal. Glue bound materials should not be used.
- 5.1.6 Open Records: The offeror's proposal shall be considered open record upon award of the RFP pursuant to Section RSMo 610.021 (State of Missouri Revised Statutes). Offeror's may view RSMo 610.021 at the following web site address: www.moga.state.mo.us/statutes/C600-699/6100021.HTM). ***The offeror shall not submit their entire proposal as proprietary or***

confidential. Also, the offeror shall not submit any part of their proposal as confidential unless the proprietary or confidential nature of the material is provided for in the above reference statute. Proprietary or confidential portions of the offeror's proposal allowed by the statute shall be separated, sealed and clearly marked as confidential within the offeror's proposal. Also, the offeror shall provide adequate explanation of what qualifies the material as being held confidential under the provisions of the statute.

5.1.7 Compliance with Terms and Conditions: The offeror's proposal response shall not take exception to or conflict with the mandatory requirements of the RFP (denoted by the words "must" and "shall") including the RFP terms and conditions. **The State of Missouri shall not award a noncompliant proposal.**

- a. The offeror is cautioned when submitting pre-printed terms and conditions regarding proprietary information, copyright, usage restrictions, license agreements, etc., to make sure such documents do not contain other terms and conditions which conflict with those of the RFP and its contractual requirements.
- b. If the offeror's and/or any other 3rd party pre-printed software license and/or service agreement(s) must be executed in order to release the software and/or to provide services required in the RFP, such agreement(s) **must** be submitted in Exhibit B in order to be considered as part of the contract between the contractor and the State of Missouri. The offeror shall be required to do one of the following if such submission is done: (1) The offeror and any 3rd party software supplier that the offeror is reselling the 3rd party's product as part of their proposal must clearly state on the first page of each of their pre-printed terms and conditions documents the following, "In the event of conflict between any of the ("name of company") terms and conditions and those contained in the **RFP B2Z05027**, the RFP shall govern" or (2) Sign the Exhibit B signature block entitled "Addendum to the Offeror's and/or 3rd Party Pre-Printed Terms and Conditions Documents".

5.1.8 Business Compliance: The offeror must be in compliance with the laws regarding conducting business in the State of Missouri. The offeror certifies by signing the signature page of this original document and any amendment signature page(s) that he/she and any proposed subcontractors are presently in compliance with such laws. The offeror shall provide documentation of compliance upon request by the Division of Purchasing and Materials Management. The compliance to conduct business in the state shall include but may not be limited to:

- a. Registration of business name (if applicable)
- b. Certificate of authority to transact business/certificate of good standing (if applicable)
- c. Taxes (e.g., city/county/state/federal)
- d. State and local certifications (e.g., professions/occupations/activities)
- e. Licenses and permits (e.g., city/county license, sales permits)
- f. Insurance (e.g., worker's compensation/unemployment compensation)
 - 1) The Secretary of State is responsible for the registration of all Missouri and out-of-state business entities doing business in Missouri. These business entities include: for profit and nonprofit corporations, limited liability companies, limited partnerships, and many others. Missouri corporations must file articles of incorporation, while out-of-state corporations must obtain a certificate of authority. In addition, all corporations must file various documents required by law, such as amendments, mergers, consolidation instruments, articles of dissolution and terminations. For further information please go

to the following web site: <http://mosl.sos.state.mo.us/bus-ser/soscor.html> or contact the Corporations Division of the Secretary of State office located at the James C. Kirkpatrick State Information Center, P.O. Box 778, Jefferson City, Missouri 65102, Telephone: (573) 751-4153.

5.2 Proposal Evaluation and Award:

- 5.2.1 Evaluative Criteria: After determining that a proposal satisfies the mandatory requirements, the evaluator(s) shall use subjective judgment in conducting a comparative assessment of the proposal in accordance with the evaluation criteria stated below:

Method of Performance, Experience & Documentation100%

- 5.2.2 Subjective Evaluation: The evaluation of the offeror's method of performance, experience, and documentation shall be subjective based on fact. Information provided by the offeror in response to the exhibits of this RFP, as well as information gained from any other source during the evaluation process, may be used in the subjective evaluation.

- a. The accessibility of the offeror's proposed product(s) will be considered in the subjective evaluation. The state recognizes that many commercial products do not conform 100% to the accessibility standards. Therefore, in evaluation of technical capabilities, the state shall subjectively evaluate the offeror's proposal based on the degree of conformance to the accessibility standards (see Paragraph 3.1.5 and Attachment 1, IT Accessibility Conformance Matrix). The subjective evaluation of accessibility will be subservient to the general, technical and functional requirements of the product.
- 5.2.3 Competitive Negotiation of Proposals: The offeror is advised that under the provisions of this Request for Proposal, the Division of Purchasing and Materials Management reserves the right to conduct negotiations of the proposals received or to award a contract without negotiations. If such negotiations are conducted, the following conditions shall apply:
- a. Negotiations may be conducted in person, in writing, or by telephone.
 - b. Negotiations will only be conducted with potentially acceptable proposals. The Division of Purchasing and Materials Management reserves the right to limit negotiations to those proposals which received the highest rankings during the initial evaluation phase. All offerors involved in the negotiation process will be invited to submit a best and final offer.
 - c. Terms, conditions, prices, methodology, or other features of the offeror's proposal may be subject to negotiation and subsequent revision. As part of the negotiations, the offeror may be required to submit supporting financial, pricing and other data in order to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the proposal.
 - d. The mandatory requirements of the Request for Proposal shall not be negotiable and shall remain unchanged unless the Division of Purchasing and Materials Management determines that a change in such requirements is in the best interest of the State of Missouri.
 - e. NOTE: The State intends to award a contract from this RFP without entering into competitive negotiations. Therefore offerors original submission should be submitted under the assumption that no competitive negotiations will be conducted. Consequentially, the offeror is strongly encouraged to resolve any potential compliance issues with the buyer prior to submitting their proposal.

- 5.2.4 Question Answer Conferences: After an initial screening process, a question and answer conference may be conducted with the offeror, if deemed necessary. In addition, the offeror may be asked to make an oral presentation of their proposal during the conference. Attendance cost at

the conference shall be at the offeror's own expense. All arrangements and scheduling shall be coordinated by the Division of Purchasing and Materials Management.

- 5.2.5 Demonstration of System: The offeror may be required to provide a demonstration of his/her system's capabilities at a site and facility provided by the State of Missouri in Jefferson City, MO. The demonstration should be constructed to both clarify and verify the offeror's response. Travel expenses incurred by evaluation team members will be the responsibility of the State of Missouri. Travel expenses incurred by the offeror will be the responsibility of the offeror.

5.3 Offerors Response to Evaluative Criteria:

- 5.3.1 Method of Performance, Experience & Documentation: The offeror should provide information relative to the offeror's proposed method of performance, experience, and solution documentation especially information as it relates to the requirements of this RFP. It is highly desirable that the offeror respond to the information requested in Exhibit A for purposes of evaluating the offeror's proposed method of performance, experience, and solution documentation.

5.4 Other Requested Information:

- 5.4.1 The offeror should respond to the information requested in Exhibit B, Other Information.

NOTE: FAILURE TO PROVIDE ADEQUATE INFORMATION TO COMPLETELY ADDRESS THE SPECIFIED EVALUATION CRITERIA WILL AT LEAST RESULT IN MINIMAL SUBJECTIVE CONSIDERATION AND MAY RESULT IN REJECTION OF THE OFFEROR'S PROPOSAL.

EXHIBIT A

METHOD OF PERFORMANCE, EXPERIENCE & DOCUMENTATION

The following information should be provided by the offeror in order to verify the method of performance, experience and documentation of the proposed community calendar web site. The evaluation of the capabilities, support, and performance of the proposed community calendar web site application shall be subjective. The State reserves the right to use this information, including information gained from any other source during the evaluation process.

A.1 METHOD OF PERFORMANCE

- a. The offeror should describe how the proposed system would meet each of the functional/performance requirements stated in the Technical Specifications and Performance Requirement sections of the RFP. *For each of the technical and performance specifications described in sections 3 and 4 the offeror should describe how (including the process involved), when, by whom, with what, to what degree, why, where, etc., the requirements will be satisfied. Please use the same paragraph numbering scheme of the RFP when responding to each technical and performance specification.* The offeror should present a detailed description of all products and services proposed in the response to this Request for Proposal. It is the offeror's responsibility to make sure all products proposed are adequately described. It should not be assumed that the evaluator has specific knowledge of the products proposed; therefore, all descriptions of the web site must be presented in sufficient detail so that an evaluation can be made without prior specific knowledge of the software proposed.
- b. Product Accessibility: As explained under “Accessibility Compliance” in the Technical/Performance Requirements section of this document, the State of Missouri is mandated to make information technologies accessible to individuals with disabilities and has established statewide accessibility standards (Missouri Information Technology (IT) Accessibility Standards [www.oit.state.mo.us/policies/accessibility.html]) which must be followed in the state's acquisition of IT products. Therefore, the offeror must provide a description of each proposed product's conformance with the Missouri IT Accessibility Standards by means of completing either a Voluntary Product Accessibility Template (VPAT) (www.itic.org/policy/508/Sec508.html) or other comparable document (see Attachment 1). If a product does not conform completely to a given Missouri IT Accessibility Standard, the offeror must disclose the non-conformance as part of the VPAT or comparable document.
 - b.1 The offeror should also provide a written description of compatibility with the following commonly used assistive technology products and a description of the process used to evaluate compatibility:
 - JAWS,
 - Window Eyes,
 - ZoomText,
 - MAGic, and
 - Dragon Naturally Speaking.

(NOTE: The accessibility of the offeror's proposed product(s) will be considered in the evaluation.)

- b.2 The link references below should help offerors in determining the degree of conformance of their software products. The first link is the tutorial from the Access Board on the accessibility standards. Next is a link to the Access Forum's Paper Tool which provides a discussion of each access standard and techniques for reviewing and deciding if the product meets that standard. This link is to one large document for all access standards so offerors will have to go to the software section

for the software standards. Third link is the same type document that is used by a federal agency in reviewing products for conformance to the software standards. And last link is an example of Microsoft's report of conformance to these same software access standards for one of their products (same general format of three columns with standard, supporting features and explanations).

- 1) <http://www.access-board.gov/sec508/software-tutorial.htm>
- 2) http://accessibilityforum.org/paper_tool.html
- 3) http://www.tvworldwide.com/ittact/030813/Cannady_procured_software_v1.doc
- 4) http://www.microsoft.com/usa/government/FrontPage2002_VPAT.doc

c. Offeror should include the following information with regards to Web Site Capabilities, Safeguards, Security, & User Friendly Features with their proposal:

- 1) The offeror should describe in detail other web site capabilities and user friendly features that were not outlined under Exhibit B.1.a.
- 2) The offeror should describe the proposed web site's organization format, record format, and underlying data base management system(s).
- 3) The offeror should provide information on the server(s) used for the centralized database, including type of storage, provisions for server or controller redundancy, and mean time between failures for the processor and the disk subsystem.
- 4) The offeror should describe the web site security.
- 5) The offeror should describe the web site safeguards that include, but are not limited to, initial data input, data transfers, etc.
- 6) The offeror should describe how the proposed web site is accessible simultaneously by multiple users (both by the State and the general public).
- 7) The offeror should provide a description of all additional programs including programming languages, report writer capabilities and limitations, and other utility programs required to support this product.
- 8) The offeror should identify how the web site will deal with the following types of failures within the communications network:
 - Loss of electrical power
 - Loss of Internet connectivity
 - Malicious network attack/virus
- 9) The offeror should identify other types of failures, and how the system and related procedures could respond to those failures.
- 10) The offeror should describe and depict an example of a Community Calendar Web site design that shows a template of what the Missouri Web site may look like.
- 11) The offeror should describe how the Web site databases may/will be integrated with the State's Home Page (www.state.mo.us) and maintained over time, as changes are made to the Web site and the overall system.

- 12) The offeror should describe the Web site's best performance commitments in terms of capacity (number of customers who can use the site simultaneously).
- 13) Technology tools, platforms and standards related to the Internet are rapidly evolving. The offeror should propose how Web site performance, services and security will be maintained over time, and how technology opportunities will be identified and implemented over time in order to improve the Web site, to stay current with customer expectations, and to be competitive.
- 14) The offeror should articulate their position on Web site advertising, and to clearly define within the hierarchy of navigation, which Web page(s) are under the sole control of the contractor, and which Web page(s) are under the sole control of the State.
- 15) If advertising is used, where will such ads be placed and what restrictions does the offeror incorporate on the type of advertising used? What types of advertising do you allow and what types of advertising do you restrict?
- 16) The offeror should describe the offeror's current method of monitoring Web site performance and transactions.
- 17) The offeror should describe how the State will access the Missouri Web site information provided in the monthly server log that provides information regarding the Web site performance. Provide a sample of the information provided in the monthly server log.
- 18) The offeror should describe any bilingual services you currently offer for the Community Calendar Web site.
- 19) The offeror should describe all reporting mechanisms included with the web site. Provide examples of the reports. Briefly describe the purpose for each report and the ability to customize the reports.
- 20) The offeror should describe searching capabilities and functions of the web site.
- 21) The offeror should describe the technical support given both during and after implementation/roll out of the web site application.
- 22) The offeror should also describe the process for installing updates to the web site.
- 23) The offeror should identify the minimum hardware specifications needed in order to access and/or use the proposed web site.
- 24) The offeror should describe your support policy and the support services included with the software/Web site maintenance and technical support services.
- 25) What are the procedures for the State to contact the service/help desk personnel? Include hours of support.
- 26) What type of on-going telephone support and general consultation is available?
- 27) The offeror should state estimated minimum/maximum response times for typical reported problems of the web site (Refer to paragraph 3.2.5).
- 28) The offeror should describe at least four problems typically reported to the help desk, the typical time frames it has taken offeror to resolve each problem, and offeror's estimate to resolve such problems for the State.

- 29) What type of additional technical assistance is available? (Description should include escalation procedures for critical problem reporting.)
- 30) With regards to the Missouri Community Calendar Web site's scheduled downtime, describe the length of time necessary to perform routine maintenance and the time frame this typically occurs.
- 31) If information is available, please indicate your current Community Calendar Web site(s) performance measures for 2002 to 2004. Indicate percentage of operational uptime for each month for the years 2002 to 2004.
- 32) The offeror should describe upgrade/new release procedures for the web site.
- 33) What is your current disaster recovery plan? Describe the frequency used to test the disaster recovery plan as well as the testing methodology. What happens when the telecommunication lines are down? Describe your procedures for handling such situations.
- 34) How do you protect your network environment from viruses? Over the past three years, how frequently have viruses been detected in your current network environment?

A.2 EXPERIENCE/ADDITIONAL INFORMATION/DOCUMENTATION

- a. The offeror should provide a list of other entities for which they, or their proposed subcontractors, have provided the same or similar services as that proposed herein. For each of the agencies, the offeror should provide a contact name at the agency, their telephone number and e-mail address and a description of the application that makes it similar to the application proposed.
- b. The offeror should provide a list of other entities for which they, or their proposed subcontractors, have provided services other than those required. For each of the agencies, the offeror should provide a contact name at the agency, their telephone number and e-mail address and a description of the application that makes it similar to the application proposed.

ADDITIONAL INFORMATION

- c. With regards to the compensation for the provision of and the hosting of the Missouri Community Calendar shall be supplied through the contractor's third party agreements with advertisers, please describe the anticipated advertising arrangements and cost structure of these arrangements.
- d. The offeror should provide a description of the proposed services that will be performed and/or the proposed products that will be provided by Missourians and/or Missouri products.
- e. The offeror should provide a description of the economic impact returned to the State of Missouri through tax revenue obligations.
- f. The offeror should provide a description of the company's economic presence within the State of Missouri (e.g., type of facilities: sales offices; sales outlets; divisions; manufacturing; warehouse; other), including Missouri employee statistics.

- g. If any products and/or services offered under this RFP are being manufactured or performed at sites outside the continental United States, the offeror MUST disclose such fact and provide details with the proposal.

FAILURE TO PROVIDE ADEQUATE INFORMATION AS REQUESTED ABOVE WILL AT LEAST RESULT IN MINIMAL SUBJECTIVE CONSIDERATION AND MAY RESULT IN REJECTION OF THE OFFEROR'S PROPOSAL.

EXHIBIT B**OTHER REQUESTED INFORMATION****B.1 Addendum to Offeror's and/or 3rd Party's Pre-Printed Terms and Conditions Documents**

If the offeror's or 3rd Party's pre-printed software license and/or service agreement(s) must be executed in order to release the software and/or to provide services required in the RFP, such agreement(s) **must** be submitted in this Exhibit B in order to be considered as part of the contract between the contractor and the State of Missouri. In addition, the offeror and/or 3rd Party shall be required to do one of the following in the event pre-printed terms and conditions are submitted: (1) The offeror/3rd Party must clearly state on the first page of each of their pre-printed terms and conditions documents the following, *"In the event of conflict between any of the ("name of offeror's/3rd Party's company") terms and conditions and those contained in the RFP B2Z05027 that the RFP shall govern"* or (2) Sign and date the "Addendum to the Offeror's/3rd Party's Pre-Printed Terms and Conditions Documents" signature box below.

**ADDENDUM TO OFFEROR'S AND/OR 3RD PARTY'S PRE-PRINTED
TERMS AND CONDITIONS DOCUMENTS**

By signing the signature block below the offeror and/or 3rd Party hereby declares understanding and agreement with the following: (1) that the language of this RFP shall govern in the event of a conflict with his/her proposal, including any pre-printed terms and conditions documents such as software license agreements, maintenance support services agreements, professional services agreements, etc., that are submitted as part of his/her proposal, and (2) any of the offeror's and/or 3rd Party terms and conditions contained in the submitted pre-printed terms and condition documents that conflict with the RFP B2Z0527's terms and conditions, shall have no force or effect and are hereby considered invalid. All other terms and provisions of the offeror's and/or 3rd Party's pre-printed terms and conditions documents that are not in conflict with the RFP shall apply hereto.

SIGNATURE REQUIRED

AUTHORIZED SIGNATURE	DATE
PRINTED NAME	TITLE
OFFEROR'S COMPANY NAME	

AUTHORIZED SIGNATURE	DATE
PRINTED NAME	TITLE
3 RD PARTY'S COMPANY NAME	

B.2 CONTACT INFORMATION

If different from the information provided on the front page of the RFP, the offeror should provide all necessary contact information including the RFP Coordinator, Contract Coordinator if awarded a contract, etc.

RFP COORDINATOR CONTACT INFORMATION <i>i.e. person to be contacted for questions and other coordination activities regarding the offeror's proposal</i>	
NAME:	
JOB TITLE:	
PHONE:	
FAX #:	
EMAIL:	

CONTRACT COORDINATOR CONTACT INFORMATION <i>i.e. person to be contacted for questions and other coordination activities regarding an awarded contract</i>	
NAME:	
JOB TITLE:	
PHONE:	
FAX #:	
EMAIL:	

B.3 PREFERENCE FOR ORGANIZATIONS FOR THE BLIND AND SHELTERED WORKSHOPS

- 1) A five (5) bonus point preference shall be granted to proposals including products and/or services manufactured, produced or assembled by qualified nonprofit organizations for the blind established pursuant to 41 U.S.C. sections 46 to 48c and sheltered workshops holding a certificate of approval from the Department of Elementary and Secondary Education pursuant to section 178.920 RSMo. Five bonus points will be added to the total evaluation points for proposals qualifying for the preference.
- 2) If the offeror is an organization for the blind or sheltered workshop, then the offeror should provide evidence of qualifications as described herein (i.e., copy of certificate or certificate number).
- 3) If the offeror is utilizing an organization for the blind or sheltered workshop as a subcontractor, then the offeror **MUST** submit a letter of intent signed by the organization for the blind or sheltered workshop describing the products/services they will provide and indicating their commitment to aid the contractor's performance under the prospective state contract.

B.4 AMERICANS WITH DISABILITIES ACT - EQUIPMENT MODIFICATION

- 1) In order to assist the State of Missouri in fulfilling the requirements of the Americans with Disabilities Act (ADA), the offeror is requested to furnish the following information:

The offeror should state whether the proposed equipment can be modified for use by persons with disabilities:

YES _____ NO _____

If yes, the offeror should describe and provide optional pricing, including installation and maintenance (if appropriate), for any available modifications.

B.5 OFFERORS AS EMPLOYEES

- 1) Offerors who are employees of the State of Missouri, a member of the General Assembly or a statewide elected official must comply with Sections 105.450 to 105.458 RSMo regarding conflict of interest. If the offeror and/or any of the owners of the offeror's organization are currently an employee of the State of Missouri, a member of the General Assembly or a statewide elected official, please provide the following information:

Name and title of state employee, General Assembly member or statewide elected official: _____

Name of state agency where employed: _____

Percentage of ownership interest in offeror's organization held by state employee, General Assembly member or statewide elected official: _____%

B.6 MBE/WBE CERTIFICATION

- 1) Executive Order 98-21 directs state agencies to increase the participation of certified minority business enterprises (MBE) and women business enterprises (WBE) in state procurements. MBE/WBE certification by the State of Missouri, Office of Administration, Office of Equal Opportunity is required to be considered an eligible MBE/WBE in meeting participation goals. If you qualify as a MBE or a WBE as defined in 37.020 RSMo, please mark the appropriate blank below. To obtain an application for certification, go to the OEO Internet website and download an application at <http://www.oa.mo.gov/oao/Application-profit.pdf> or contact the MBE/WBE Certification Program at 877-259-2963 or email nancy.heyer@oa.mo.gov.

_____ MBE _____ WBE _____ Both

B.7 LOCAL GOVERNMENT USE (COOPERATIVE PROCUREMENT):

The offeror should indicate agreement/disagreement to participate in the State of Missouri's Cooperative Procurement Program as described herein (refer to paragraph 2.16.1).

Yes _____ No _____

**STATE OF MISSOURI
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT**

TERMS AND CONDITIONS -- REQUEST FOR PROPOSAL

1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in a Request for Proposal (RFP) document or any amendment thereto, the definition or meaning described below shall apply.

- a. **Agency and/or State Agency** means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the **Division of Purchasing and Materials Management (DPMM)**. The agency is also responsible for payment.
- b. **Amendment** means a written, official modification to an RFP or to a contract.
- c. **Attachment** applies to all forms which are included with an RFP to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. **Proposal Opening Date and Time** and similar expressions mean the exact deadline required by the RFP for the receipt of sealed proposals.
- e. **Offeror** means the person or organization that responds to an RFP by submitting a proposal with prices to provide the equipment, supplies, and/or services as required in the RFP document.
- f. **Buyer** means the procurement staff member of the DPMM. The **Contact Person** as referenced herein is usually the Buyer.
- g. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- h. **Contractor** means a person or organization who is a successful offeror as a result of an RFP and who enters into a contract.
- i. **Exhibit** applies to forms which are included with an RFP for the offeror to complete and submit with the sealed proposal prior to the specified opening date and time.
- j. **Request for Proposal (RFP)** means the solicitation document issued by the DPMM to potential offerors for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- k. **May** means that a certain feature, component, or action is permissible, but not required.
- l. **Must** means that a certain feature, component, or action is a mandatory condition.
- m. **Pricing Page(s)** applies to the form(s) on which the offeror must state the price(s) applicable for the equipment, supplies, and/or services required in the RFP. The pricing pages must be completed and submitted by the offeror with the sealed proposal prior to the specified proposal opening date and time.
- n. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of DPMM.
- o. **Shall** has the same meaning as the word must.
- p. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

2. APPLICABLE LAWS AND REGULATIONS

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the DPMM.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.

- e. The exclusive venue for any legal proceeding relating to or arising out of the RFP or resulting contract shall be in the Circuit Court of Cole County, Missouri.

3. OPEN COMPETITION/REQUEST FOR PROPOSAL DOCUMENT

- a. It shall be the offeror's responsibility to ask questions, request changes or clarification, or otherwise advise the DPMM if any language, specifications or requirements of an RFP appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFP to a single source. Any and all communication from offerors regarding specifications, requirements, competitive proposal process, etc., must be directed to the buyer from the DPMM, unless the RFP specifically refers the offeror to another contact. Such communication should be received at least ten calendar days prior to the official proposal opening date.
- b. Every attempt shall be made to ensure that the offeror receives an adequate and prompt response. However, in order to maintain a fair and equitable procurement process, all offerors will be advised, via the issuance of an amendment to the RFP, of any relevant or pertinent information related to the procurement. Therefore, offerors are advised that unless specified elsewhere in the RFP, any questions received less than ten calendar days prior to the RFP opening date may not be answered.
- c. Offerors are cautioned that the only official position of the State of Missouri is that which is issued by the DPMM in the RFP or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. The DPMM monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among offerors, price-fixing by offerors, or any other anticompetitive conduct by offerors which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- e. The RFP is available for viewing and downloading on the state's On-Line Bidding website. Registered vendors are electronically notified or mailed the RFP based on the information maintained in the State of Missouri's vendor database. If any portion of the address is incorrect, the offeror must notify the buyer in writing or update the address themselves on the state's On-Line Bidding website.
- f. The DPMM reserves the right to officially amend or cancel an RFP after issuance.

4. PREPARATION OF PROPOSALS

- a. Offerors **must** examine the entire RFP carefully. Failure to do so shall be at offeror's risk.
- b. Unless otherwise specifically stated in the RFP, all specifications and requirements constitute minimum requirements. All proposals must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the RFP, any manufacturer names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The offeror may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the proposal. In addition, the offeror shall explain, in detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Proposals which do not comply with the requirements and specifications are subject to rejection without clarification.
- d. Proposals lacking any indication of intent to offer an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the RFP.
- e. In the event that the offeror is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an RFP, such a offeror may submit a proposal which contains a list of statutory limitations and identification of those prohibitive clauses which will be modified via a clarification conference between the DPMM and the offeror, if such offeror is selected for contract award. The clarification conference will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the RFP. Any such offeror needs to include in the proposal, a complete list of statutory references and citations for each provision of the RFP which is affected by this paragraph.

- f. All equipment and supplies offered in a proposal must be new, of current production, and available for marketing by the manufacturer unless the RFP clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the RFP.
- h. Prices offered shall remain valid for 90 days from proposal opening unless otherwise indicated. If the proposal is accepted, prices shall be firm for the specified contract period.
- i. Any foreign offeror not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their proposal in order to be considered for award.

5. SUBMISSION OF PROPOSALS

- a. Proposals may be submitted by delivery of a hard copy to the DPMM office. Electronic submission of proposals through the State of Missouri's On-Line Bidding website is not available unless stipulated in the RFP. Delivered proposals must be sealed in an envelope or container, and received in the DPMM office located at 301 West High St, Rm 630 in Jefferson City, MO no later than the exact opening time and date specified in the RFP. All proposals must (1) be submitted by a duly authorized representative of the offeror's organization, (2) contain all information required by the RFP, and (3) be priced as required. Hard copy proposals may be mailed to the DPMM post office box address. However, it shall be the responsibility of the offeror to ensure their proposal is in the DPMM office (address listed above) no later than the exact opening time and date specified in the RFP.
- b. The sealed envelope or container containing a proposal should be clearly marked on the outside with (1) the official RFP number and (2) the official opening date and time. Different proposals should not be placed in the same envelope, although copies of the same proposal may be placed in the same envelope.
- c. A proposal submitted electronically may be modified on-line prior to the official opening date and time. A proposal which has been delivered to the DPMM office, may be modified by signed, written notice which has been received by the DPMM prior to the official opening date and time specified. A proposal may also be modified in person by the offeror or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to modify a proposal shall not be honored.
- d. A proposal submitted electronically may be canceled on-line prior to the official opening date and time. A proposal which has been delivered to the DPMM office, may only be withdrawn by a signed, written notice or facsimile which has been received by the DPMM prior to the official opening date and time specified. A proposal may also be withdrawn in person by the offeror or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to withdraw a proposal shall not be honored.
- e. When submitting a proposal electronically, the offeror indicates acceptance of all RFP terms and conditions by clicking on the "Submit" button on the Electronic Bid Response Entry form. Offerors delivering a hard copy proposal to DPMM must sign and return the RFP cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the offeror of all RFP terms and conditions. Failure to do so may result in rejection of the proposal unless the offeror's full compliance with those documents is indicated elsewhere within the offeror's response.

6. PROPOSAL OPENING

- a. Proposal openings are public on the opening date and at the opening time specified on the RFP document. Only the names of the respondents shall be read at the proposal opening and posted on the state's On-Line Bidding website. The contents of the responses shall not be disclosed at this time.
- b. Proposals which are not received in the DPMM office prior to the official opening date and time shall be considered late, regardless of the degree of lateness, and normally will not be opened. Late proposals may only be opened under extraordinary circumstances in accordance with 1 CSR 40-1.050.

7. PREFERENCES

- a. In the evaluation of proposals, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- c. In accordance with Executive Order 98-21, contractors are encouraged and may be required per the RFP to utilize certified minority and women-owned businesses in selecting subcontractors.

8. EVALUATION/AWARD

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the offeror and request clarification of the intended proposal. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- b. Any pricing information submitted by an offeror shall be subject to evaluation if deemed by the DPMM to be in the best interest of the State of Missouri.
- c. The offeror is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the State of Missouri. However, unless otherwise specified in the RFP, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.
- d. Awards shall be made to the offeror whose proposal (1) complies with all mandatory specifications and requirements of the RFP and (2) is the lowest and best proposal, considering price, responsibility of the offeror, and all other evaluation criteria specified in the RFP and any subsequent negotiations and (3) complies with Sections 34.010 and 34.070 RSMo and Executive Order 04-09.
- e. In the event all offerors fail to meet the same mandatory requirement in an RFP, DPMM reserves the right, at its sole discretion, to waive that requirement for all offerors and to proceed with the evaluation. In addition, the DPMM reserves the right to waive any minor irregularity or technicality found in any individual proposal.
- f. The DPMM reserves the right to reject any and all proposals.
- g. When evaluating a proposal, the State of Missouri reserves the right to consider relevant information and fact, whether gained from a proposal, from an offeror, from offeror's references, or from any other source.
- h. Any information submitted with the proposal, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a proposal and the award of a contract.
- i. Negotiations may be conducted with those offerors who submit potentially acceptable proposals. Proposal revisions may be permitted for the purpose of obtaining best and final offers. In conducting negotiations, there shall be no disclosure of any information submitted by competing offerors.
- j. Any award of a contract shall be made by notification from the DPMM to the successful offeror. The DPMM reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by DPMM based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.
- k. Pursuant to Section 610.021 RSMo, proposals and related documents shall not be available for public review until after a contract is executed or all proposals are rejected.
- l. The DPMM posts all proposal results on the On-line Bidding website for a reasonable period after proposal award and maintains images of all proposal file material for review. Offerors who include an email address with their proposal will be notified of the award results via email.
- m. The DPMM reserves the right to request clarification of any portion of the offeror's response in order to verify the intent of the offeror. The offeror is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- n. Any proposal award protest must be received within ten (10) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).

- o. The final determination of contract(s) award shall be made by DPMM.

9. CONTRACT/PURCHASE ORDER

- a. By submitting a proposal, the offeror agrees to furnish any and all equipment, supplies and/or services specified in the RFP, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the RFP, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with RFP changes/additions, (2) the contractor's proposal including the contractor's BAFO, and (3) DPMM's acceptance of the proposal by "notice of award" or by "purchase order."
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the contractor must receive a properly authorized purchase order.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the DPMM or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

10. INVOICING AND PAYMENT

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the DPMM.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the RFP.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in Section 34.055 RSMo.

11. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

12. INSPECTION AND ACCEPTANCE

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.

- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

13. WARRANTY

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the DPMM, (2) be fit and sufficient for the purpose expressed in the RFP, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

14. CONFLICT OF INTEREST

- a. Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the proposal the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

15. REMEDIES AND RIGHTS

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

16. CANCELLATION OF CONTRACT

- a. In the event of material breach of the contractual obligations by the contractor, the DPMM may cancel the contract. At its sole discretion, the DPMM may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide DPMM within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the DPMM will issue a notice of cancellation terminating the contract immediately.
- c. If the DPMM cancels the contract for breach, the DPMM reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the DPMM deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

17. COMMUNICATIONS AND NOTICES

Any notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the contractor.

18. BANKRUPTCY OR INSOLVENCY

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the DPMM immediately.
- b. Upon learning of any such actions, the DPMM reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

19. INVENTIONS, PATENTS AND COPYRIGHTS

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

20. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the DPMM shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the DPMM until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

21. AMERICANS WITH DISABILITIES ACT

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

22. FILING AND PAYMENT OF TAXES

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of

this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore offeror's failure to maintain compliance with chapter 144, RSMo may eliminate their proposal from consideration for award.

23. TITLES

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.

Revised 08/28/04

___END OF DOCUMENT___